IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: J U D G M E N T ::

(1) Paras Ram Vs. Dhani Ram

S.B. CIVIL MISC. APPEAL NO.1459/2005.

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(2) Paras Ram Vs. Gopi Lal

S.B. CIVIL MISC. APPEAL NO.1460/2005.

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Against the order dated 03.09.2005 passed by the Additional District Judge (Fast Track), Rajsamand in Civil Suit Nos. 44/2004 and 45/2004 respectively.

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Date of Judgment :: 22nd August 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sandeep Sarupariya, for the appellants.
Mr. B.L. Choudhary, for the respondents.

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For similar and so also inter-mixed facts; and for common grounds, these two appeals, CMA No.1459/2005 and CMA No.1460/2005, have been heard together and are taken up for disposal by this common judgment. Both these appeals relate to similar nature orders dated 03.09.2005 passed by the Additional District Judge (Fast Track), Rajsamand respectively in Civil Original Suit (CO) Nos.44/2004 and

45/2004 making provisional determination of rent under Section13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 ('the Act' hereinafter).

The defendant-appellant basically contends in both the appeals that relationship of landlord and tenant between himself and the plaintiff is seriously in dispute and the transaction in question was nothing but monetary and mortgage transaction, as is apparent from the pleadings; and, for the facts explicit, these two suits filed respectively by Dhani Ram and his father Gopi Lal for eviction and recovery of arrears of rent on the basis of alleged rent notes have been ordered to be consolidated with another suit (CO No.46/2004) filed jointly by these two plaintiffs for recovery of amount of Rs.2,50,000/- said to have been advanced as loan and in security whereof the premises in question were mortgaged with the plaintiffs. According to the appellant, for such being the nature of transaction between the parties, the alleged rent notes were merely the part of security towards the alleged loan and interest; and no relationship of landlord and tenant came into existence thereunder; and, therefore, the learned trial court has been in error in making provisional determination under Section 13(3) of the Act.

Having examined the matters in totality, this Court is clearly of opinion that the learned trial court has not committed

any error in making provisional determination under Section 13 (3) of the Act and these appeals deserve to be dismissed.

By the order dated 03.09.2005 (Annex.4) passed in relation to the three suits, CO Nos. 44/2004 (Dhani Ram Vs. Paras Ram), 45/2004 (Gopi Lal Vs. Paras Ram) and 46/2004 (Gopi Lal Vs. Paras Ram), the learned trial court has taken note of all the circumstances; and has found that CO Nos.44/2004 and 45/2004 were filed for eviction whereas CO No.46/2004 was filed for money recovery; and all the three suits were instituted on 12.11.1999. In CO No.46/2004, the plaintiffs have alleged chain of mortgage transactions whereby they allegedly advanced loan and the defendant (the present appellant) created charge over his property. It has also been averred that the property in question has come in possession of the plaintiffs as mortgagees and then was taken on rent by the defendant. The learned trial court in the circumstances of the case has considered it appropriate to try the three suits consolidated.

However, by another order of the even date (the impugned order Annex.A/5 in CMA No.1459/2005) in relation to CO No.44/2004, the learned trial court has taken note of the allegations of the plaintiff that the premises were let out to the defendant on 07.11.1996 at a rent of Rs.4,500/- per month and a rent note was executed in that relation; and that the

defendant has not made payment of rent since 07.01.1997. The learned trial court has also taken note of the contention on behalf of the defendant that the rent note was got executed by the plaintiff for the purpose of recovering excessive interest. The learned trial court was of opinion that prima facie the relationship of landlord and tenant appeared from the rent note placed on record and, therefore, provisional determination is required to be made under Section 13(3) of the Act. For there being no other contention on the part of the defendant-appellant on the rate and on the dues of rent, the learned trial court has considered it appropriate to make provisional determination on the basis of the rate alleged by the plaintiff at Rs.4,500/- per month. The learned trial court has, therefore, determined the arrears of rent for 103 months at Rs.4,63,500/-; and while allowing interest @ 6% per annum, has directed the defendant to make deposit of the amount of Rs.6,42,851/- within a month in the bank account of the plaintiff.

Similarly and by yet another order of the even date (impugned order Annex.A/5 in CMA No.1460/2005) in relation to the CO No.45/2004, the learned trial court has noticed the allegation of the plaintiff that the premises were taken on rent on 07.11.1996 at Rs.2,625/- per month; and that the defendant has not made the payment of rent since 06.01.1997. The

learned trial court has again noticed the submissions of the defendant about his being not the tenant and the transaction being essentially a money transaction and that, in the garb of rent note, only excessive interest was sought to be recovered; and again with reference to the requirements of law and with the finding that prima facie the defendant appeared to be the tenant in view of the rent note produced on record, has proceeded to make determination of rent due for 103 months at Rs.2,625/- per month, totalling to Rs.2,70,375/-, and while allowing interest @ 6% per annum has directed the defendant to deposit an amount of Rs.3,40,296/- in the bank account of the plaintiff.

It has been repeatedly asserted by the learned counsel for the appellant that with the money recovery suit having been consolidated with these suits for rent and eviction, the scope of inquiry is entirely different in the consolidated trial; and when the very fundamentals of existence of relationship of landlord and tenant are in dispute, in the facts and circumstances of these cases, there was no justification for the learned trial court to have made provisional determination under Section 13 (3) of the Act. The submissions are not well founded; and the orders passed by the learned trial court in both the suits remain unexceptionable.

Mere consolidation of the three suits for the purpose of

their trial in view of inter-mixed facts and contentions, the nature of the present suits, CO No.44/2004, and CO No.45/2004 being those for eviction on the ground of default in payment of rent is not taken away nor altered. Section 13(3) of the Act enjoins the requirement of making provisional determination of rent when the suit for eviction is filed based on the ground of default. Of course, prima facie satisfaction is required with the trial court that there exists a relationship of landlord and tenant; and for that matter, in the present cases, admittedly the plaintiffs have produced the rent note executed by the defendant-appellant. The learned trial court, therefore, cannot be said to have erred in recording its prima facie satisfaction of existence of relationship of landlord and tenant. An examination of the plaint in relation to the third suit for money recovery (CO No.46/2004), placed on record as Annexure-A/2, makes it apparent that while stating the details of mortgaged transactions the plaintiffs have asserted that they acquired possession of property as mortgagees; and that the defendant took the respective premises on rent and executed the rent notes in favour of the respective plaintiffs. The defendant-appellant in his written statement has not denied his signatures on the rent notes; but has alleged that they were got executed for the purpose of ensuring recovery of interest.

The questions posed by the defendant are definitely required to be left to be determined in the trial of the suits; but at the stage of provisional determination of rent, the scope of inquiry in the suit of the present nature is not beyond prima facie satisfaction about existence of the relationship of landlord and tenant, about the rate of rent, and about the period of default. The learned trial court was perfectly justified in making provisional determination as mandatorily required by Section 13(3) of the Act.

There is no scope for interference in these appeals and the same are, therefore, dismissed. No costs.

(DINESH MAHESHWARI), J.

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